

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-849614-D1 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: Richard J. Wirick

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1653

Richard J. Wirick

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 14 November 1966, an Examiner of the United States Coast Guard at New York, N. Y. suspended Appellant's seaman documents for two months outright plus four months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved allege that, while serving as an able seaman on board the United States SS WOLVERINE STATE under authority of the document above described, on or about 13 September 1966, while the ship was at Bremerhaven, Germany, Appellant wrongfully failed to report aboard to shift the vessel; that on or about 21 September 1966, while the ship was at Le Havre, France, Appellant wrongfully failed to obey a lawful order of the Chief Mate; that on or about the same date and while the vessel was at the same place, Appellant wrongfully failed to perform his assigned duties and left the vessel without permission.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and the second, third and fourth specification, but entered a plea of guilty to the first specification.

The Investigating Officer introduced in evidence a copy of the ship's shipping articles and certified copies of entries from the ship's Official Logbook.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved; the first specification by plea, and the others by substantial evidence. The Examiner then entered an order suspending all documents issued to Appellant for a period of two months outright plus months on twelve months' probation.

The entire decision was served on 16 November 1966. Appeal was timely filed on 9 December 1966.

FINDINGS OF FACT

On 13 and 21 September 1966, Appellant was serving as an able seaman on board the United States SS WOLVERINE STATE and acting under authority of his document while the ship was on a foreign voyage.

On 13 September 1966, while the ship was at Bremerhaven, Germany, Appellant, having left the vessel knowing that he would have to return on time to assist in shifting the vessel's position, returned at about 1920 hours, only to find that the vessel had already begun her shift and that he was too late to board and assist in the vessel's movement.

On 21 September 1966, while the ship was at Le Havre, France, Appellant, in response to an alleged refusal of the ship's master to give him a draw against his wages, left the ship and communicated by telephone with the United States Consul in Paris, France, concerning the alleged denial of the draw by the master. He was advised to call back later in the day and he returned to the ship. Later, at about 1415 hours, Appellant ceased performance of his assigned duties on board the ship in contravention of a lawful order by the ship's chief officer to continue. He then left the vessel without permission, allegedly in order to again call the United States Consul in Paris.

Appellant's prior record consists of a warning on 22 June 1965, for absence without leave for two days, failing to report to secure the ship for sea, engaging, while in a state of intoxication, in an altercation with a fellow crew member and issuing a threat to kill him; and a two months suspension on 11 October 1966, for absence without leave.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that although the first specification, to which Appellant entered a plea of guilty, relates only to Appellant's failure to report aboard to shift the vessel, the Examiner found in connection with this specification, that prior to his failure to report, Appellant left the vessel without permission; that there is no evidence of record to support this portion of his finding on the first specification; and that the finding should be modified accordingly. In addition, it is contended that the Examiner's order is excessive in view of all the circumstances surrounding the charge and specifications and that this is particularly true when it is considered that the Examiner, in determining what penalty to assess against Appellant, apparently relied in part upon the unsupported factual finding indicated above.

APPEARANCE: Abraham E. Freedman, Esq., of New York, N.Y.

OPINION

The matters raised on appeal clearly have merit. There is no basis in the record for a conclusion that Appellant left the vessel without permission at Bremerhaven. Moreover, such a conclusion goes beyond the scope of the specification concerning Appellant's service while the ship was at Bremerhaven. Thus, this conclusion of the Examiner may not properly be considered.

Inasmuch as it was considered by the Examiner, his order, though within the scope of that which may be entered under the circumstances present here, should, in my opinion, be reduced in the interest of consistency. Therefore, the Examiner's order will be modified so as to provide merely for two months outright suspension with no probationary period.

ORDER

The order of the Examiner dated at New York, N. Y., on 14 November 1966, is modified to provide for an outright suspension of two months. As so modified, the order is AFFIRMED.

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 4th day of August 1967.

INDEX

CHARGES AND SPECIFICATIONS

Propriety of Examiner making finding of fact unrelated to

EVIDENCE

in support of Examiner's finding, lack of

FINDING OF FACT

no evidence to support portion of
related to offense not charged